

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:97-CR-00098-F-1

UNITED STATES OF AMERICA,)	<u>O R D E R</u>
)	
v.)	
EMMETT MADISON GRAHAM, JR., Defendant.)	

Before the court is Defendant's Motion to Terminate or Modify his Supervised Release [DE-291]. Defendant argues that his supervised release should be terminated for the following reasons: he has successfully adjusted to re-entry into society, he has met his obligations to his family and the community, and his financial obligations are current.

Background

On December 30, 1997, Defendant was charged in a four-count indictment. *See* Indictment [DE-3]. In Count One, he was charged with conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1); in Count Two, he was charged with aiding and abetting the possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2; in Count Three, he was charged with aiding and abetting the use and carry of a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. §§ 924(c)(1), 2; and in Count Four, he was charged with criminal forfeiture, in violation of 21 U.S.C. § 853. *Id.*

Defendant exercised his right to trial by a jury. On July 1, 1998, the jury returned a verdict of guilty on Counts One through Four of the Indictment. [DE-94, DE-95.]

On September 14, 1998, Defendant was sentenced to 150 months' imprisonment on

Counts One and Two, and the sentences were ordered to run concurrently. *See Judgment [DE-106].* Defendant was sentenced to 60 months' imprisonment on Count Three, and it was ordered to run consecutively. *Id.*

Defendant appealed to the Fourth Circuit Court of Appeals. [DE-110.] On July 20, 1999, the Fourth Circuit affirmed in an unpublished opinion. [DE-147.] Defendant's petition for writ of certiorari was denied.

Discussion

This court has the authority, pursuant to 18 U.S.C. § 3583(e), to modify or terminate supervised release. 18 U.S.C. § 3583(e), in pertinent part, provides:

The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) ... and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

18 U.S.C. § 3583(e)(1), (e)(2).

In this case, the United States Probation Office has filed a Response to Defendant's motion. In the Response, Probation Officer John A. Cooper asserts that although Defendant has been fully compliant with the terms of his supervision and has completed 31 months of the original 60-month term of supervision, there are factors which weigh against his request.

Specifically, Cooper notes that Defendant's criminal history dates back to 1975, and the instant offense was of a particularly violent nature. Also, Cooper notes that Defendant scores at the Low/Moderate risk level when the Risk Assessment tool employed by probation offices nationally is used to determine his supervision level. In short, Cooper recommends that Defendant's motion be denied at this time.

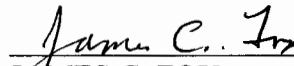
Upon careful consideration of all the relevant factors, and consistent with the recommendation of the United States Probation Office, the undersigned finds that early termination of supervised release for Defendant is not warranted at this time.

Conclusion

For the foregoing reasons, Defendant's Motion to Terminate or Modify his Supervised Release [DE-291] is DENIED.

SO ORDERED.

This, the 26th day of August, 2013.



JAMES C. FOX
Senior United States District Judge